HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.207 of 2007

Between:

B. Praveena & others

... Appellants

And

Mohammed Asadullah & others

... Respondents

Counsel for the appellants: Dr.P.B. Vijay Kumar

Counsel for respondent Nos.1 to 3: Shri A.M. Qureshi for Shri Mohammed Rahair Ahmed

Counsel for respondent No.4: Shri D.V. Nagarjuna Babu

::JUDGMENT::

March 05, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 2-2-2007 passed by the learned Single Judge, whereby he dismissed the miscellaneous petition filed by the appellants for vacating interim order dated 27-10-

2006.

In response to the advertisement issued by Dr. N.T.R. University of Health Sciences (for short, 'the university'), the appellants and respondent Nos.1 to 3 applied for admission to BUMS course, which is also known as Kamil-E-Tibbo-O-Jarahat, in the session 2006-2007. After sometime, respondent Nos.1 to 3 filed Writ Petition No.20364 of 2006 questioning the vires of paragraphs 6.1 and 6.5 of the prospectus issued by the university on the ground that it does not have the power to lay down the conditions of eligibility. They pleaded that the Central Council of Indian Medicine (for short, 'the Council') is sole repository of the power to lay down the conditions of eligibility for admission to BUMS course and the university cannot make admissions ignoring those conditions. They relied on the provisions contained in the Indian Medicine Central Council Act, 1970 (for short, 'the Act') and the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (for short, 'the Regulations'), as amended in 1995 and pleaded that the private respondents (the appellants herein), who have not passed the qualifying examination with Urdu, are not eligible to be considered for admission to BUMS course.

Along with the writ petition, respondent Nos.1 to 3 filed WPMP. No.25765 of 2006 for issue of a direction to the university to make admissions keeping in view the qualifications prescribed by the Regulations framed under Section 36 of the Act. By an order dated 27-10-2006, the learned Single Judge directed the university to follow the qualifications prescribed by the Council.

On notice, the appellants filed WVMP No.2189 of 2006 for vacating interim order. They claimed that the conditions of eligibility

prescribed by the university are not inconsistent with those prescribed by the Council and, therefore, they are entitled to be considered for admission to BUMS course.

The learned Single Judge noted that as per the Regulations framed by the Council under Section 36 of the Act, a candidate seeking admission to BUMS course must have passed Senior Secondary (XII Standard)/Intermediate Examination with Sciences (Physics, Chemistry and Biology) or its equivalent examination and should have also passed the qualifying examination with Urdu, and held that the university does not have the power to relax those conditions. The learned Single Judge then referred to paragraph 6.5 of the prospectus and held that the university is bound to make admissions strictly in accordance with the Regulations framed by the Council.

We have heard learned counsel for the parties and perused the record. There is no dispute between the parties that the Act has been enacted by the Parliament in exercise of the power vested in it under Article 246 of the Constitution read with Entry 66 of List I of the VII Schedule of the Constitution, which reads as under:

> "**6 6 .** Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions."

The aforesaid entry was interpreted by the Constitution Bench of the Supreme Court in **Dr.Preeti Srivastava v. State of M.P.**[1] in the context of the provisions contained in the Medical Council of India Act, 1956. By majority judgment, the Constitution Bench of the Supreme Court held that the State and its agencies are bound by the conditions of eligibility prescribed by the Medical Council of India. The propositions laid down in the majority judgment

read as under:

1) In view of Entry 25 of List III of the Seventh Schedule to the Constitution, both the Union as well as the States have the power to legislate on education including medical education, subject, inter alia, to Entry 66 of List I which deals with laying down standards in institutions for higher education or research and scientific and technical institutions as also coordination of such standards. A State has, therefore, the right to control education including medical education so long as the field is not occupied by any Union legislation. Secondly, the State cannot, while controlling education in the State, impinge on standards in institutions for higher education. Because this is exclusively within the purview of the Union Government. Therefore, while prescribing the criteria for admission to the institutions for higher education including higher medical education, the State cannot adversely affect the standards laid down by the Union of India under Entry 66 of List I. Secondly, while considering the cases on the subject it is also necessary to remember that from 1977, education, including, inter alia, medical and university education, is now in the Concurrent List so that the Union can legislate on admission criteria also. If it does so, the State will not be able to legislate in this field, except as provided in Article 254.

2) It would not be correct to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the postgraduate medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can and does have an adverse effect on the standards of education in the institutes of

higher education. Standards of education in an institution or college depend on various factors.

3) While considering the standards of education in any college or institution, the calibre of students who are admitted to that institution or college cannot be ignored. If the students are of a high calibre, training programmes can be suitably moulded so that they can receive the maximum benefit out of a high level of teaching. If the calibre of the students is poor or they are unable to follow the instructions being imparted, the standard of teaching necessarily has to be lowered to make them understand the course which they have undertaken; and it may not be possible to reach the levels of education and training which can be attained with a bright group. Education involves a continuous interaction between the teachers and the students. The pace of teaching, the level to which teaching can rise and the benefit which the students ultimately receive, depend as much on the calibre of the students as on the calibre of the teachers and the availability of adequate infrastructural facilities. That is why a lower student-teacher ratio has been considered essential at the levels of higher university education, particularly when the training to be imparted is a highly professional training requiring individual attention and on-hand training to the pupils who are already doctors and who are expected to treat patients in the course of doing their postgraduate courses.

4) Admissions must be made on a basis which is consistent with the standards laid down by a statute or regulation framed by the Central Government in the exercise of its powers under Entry 66 List I. At times, in some of the judgments, the words “eligibility” and “qualification” have been used interchangeably, and in some cases a distinction has been made between the two words — “eligibility” connoting the minimum criteria for selection that may be laid down by the University Act or any Central statute, while “qualifications” connoting the additional norms laid down by the colleges or by the State. In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by

the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down. Thus, once the minimum standards are laid down by the authority having the power to do so, any further qualifications laid down by the State which will lead to the selection of better students cannot be challenged on the ground that it is contrary to what has been laid down by the authority concerned. But the action of the State is valid because it does not adversely impinge on the standards prescribed by the appropriate authority."

We may now advert to the order under challenge, perusal of which shows that after taking note of the qualifications enumerated in the Regulations framed by the Council under Section 36 of the Act and the prospectus issued by the university, the learned Single Judge observed as under:

"Under Section 36 of the Act, the Central Council of Indian Medicine is empowered to make regulations for various purposes in general with special reference to aspects covered by clause 26 (a) to (p) particularly under clause 36 (1)(i) of the Regulations, the council is empowered to prescribe standards of proficiency to be followed by University/Board of Medical institutions for grant of recognized medical qualification. As per the regulations, a candidate seeking admission to BUMS course is required to have passed Senior Secondary i.e. 12th Standard with Science (Physics, Chemistry and Biology) or its equivalent examination and as per the note appended thereunder, the candidate should have passed the qualifying examination with Urdu. Obviously, the said qualification is prescribed for BUMS course, for which the medium of instruction is Urdu. When such a regulation, which is framed by the competent council, is in force, prima facie, the qualification notified in the prospectus under clause 6.5 runs contrary to the regulations framed by the Central Council of Indian Medicine.

While dealing with standards of education and eligibility norms and qualifications in Postgraduate Medical Education in Allopathy, the Hon'ble Supreme Court, in the case of **Dr.Preeti Srivastava and another v. State of M.P. and others (1999) 7 SCC 120** specifically held that the norms of admission would have a direct impact on the standards of education. It was further held that there can be rules for admission, which can be consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers conferred under List 1 of Entry 66. It was also held that States, may, for admission to the course, frame rules by prescribing higher standards and lowering the norms will have an adverse effect on the standards of education in the institutions of higher education.

Coming to the case on hand, the qualification with mere proficiency in Urdu as notified under clause 6.5 of the prospectus issued by Dr.N.T.R. University of Health Sciences runs contrary to the regulations framed by the Central Council of Indian Medicine. Prima facie, it amounts to lowering the standards of education.

It is submitted by learned counsel appearing on behalf of the respondents that as per the qualifications notified by the Central Council of Indian Medicine, candidates are not available for filling up the seats in various reserved categories by following the Presidential order. However, the same is not a ground to allow a person who is not eligible as per the regulations to enter into the course."

We entirely agree with the learned Single Judge that the university does not have the power to relax or dilute the conditions of eligibility prescribed under the Regulations framed by the Council or lay down the conditions of eligibility inconsistent with those prescribed by the Council. As a corollary, we hold that the appellants, who do not possess the qualifications prescribed under the Regulations, are not eligible to be considered for admission in BUMS course and the learned Single Judge did not commit any error by

directing the university to make admissions strictly in accordance with the Regulations.

For the reasons stated above, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.382 of 2007 filed by the appellants for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

March 05, 2007
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[1] (1999) 7 SCC 120